

REMARKS

Applicant has carefully studied the Office Action of 09 May 2003 and offers the following remarks in response thereto.

Claims 1-23 were rejected under 35 U.S.C. § 103 as being unpatentable over Iddon et al. in view of Bruins et al. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element is located in the combination of references. MPEP § 2143.03. If the Patent Office cannot do this, then the claim is not obvious over the combination and the Applicant does not have to come forward with evidence of non-obviousness.

In the present application, the independent claims all recite that the records are sent to not one, but two flow aggregation processes. In contrast, the references of record do not teach or suggest this element, and thus, the Patent Office has not established *prima facie* obviousness.

Specifically, claim 1 recites "transmitting the accounting records to first and second flow aggregation processes" The Patent Office admits that Iddon et al. does not teach or suggest this element and relies on Bruins et al. to show the flow aggregation process. However, the Patent Office never identifies where the first and second flow aggregation processes are located in the reference. This is because, at best, the reference only suggests a single flow aggregation process. Thus, neither reference individually teaches nor suggests the second flow aggregation process recited in the claim. Since neither reference individually teaches nor suggests the claim element, the combination of the references cannot teach or suggest the claim element. Since the claim element is not taught or suggested by the combination, the Patent Office has not established *prima facie* obviousness and the claim is allowable over the rejection of record.

Applicant also notes that the Patent Office indicates

it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Iddon and Bruins with transmitting the accounting records to the flow aggregation process; and the flow aggregation process that the flow aggregation process received the accounting records before discarding the accounting records sent to the flow aggregation process. This modification would allow the teachings of Iddon and Bruins to improve the accuracy and the reliability of the fault tolerance for network accounting architecture, and provide a method and system for monitoring information about network usage (see [Bruins] col. 2, lines 6-7).

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Office Action of 09 May 2003, page 4. The conclusions drawn by the Patent Office from the sentence at Bruins, col. 2, lines 6-7 are unfounded. Bruins states "[a]ccordingly, it would be desirable to provide a method and system for monitoring information about network usage." This generalized statement is not a teaching or suggestion that it is desirable to improve the accuracy and reliability of the fault tolerance for a network accounting architecture. Further, even if this statement does mean that there is a teaching or suggestion that fault tolerance is a desirable goal, the fact that fault tolerance is a desirable goal does not mean that there is a motivation to modify the combination to include a second flow aggregation process, much less modify the combination to await an acknowledgment signal from the flow aggregation process before discarding the record as recited in claim 1. The Patent Office has not shown where there is any teaching or motivation to add an acknowledgment step to the combination. This provides an independent claim element that the Patent Office has not shown, and thus, claim 1 defines over the rejection of record.

Claim 2 recites "a first flow aggregation process . . . and a second flow aggregation process . . ." As explained above, the combination of references at best teaches only one flow aggregation process, and thus, the combination does not teach or suggest a claim element. Since the claim element is not taught or suggested by the combination, the Patent Office has not established *prima facie* obviousness, and the claim is allowable over the rejection of record.

Claim 2 likewise recites disposing of the records after receipt of an acknowledgment signal. As explained above, this element is not suggested by the combination, nor has the Patent Office provided a plausible rationale for modifying the combination to include this element.

Claim 18 recites "transmit the accounting records to first and second flow aggregation processes . . ." As explained above, the combination of references at best teaches only one flow aggregation process, and thus, the combination does not teach or suggest a claim element. Since the claim element is not taught or suggested by the combination, the Patent Office has not established *prima facie* obviousness, and the claim is allowable over the rejection of record.

Claim 18 likewise recites the acknowledgment signal, which, as explained above, is not taught or suggested by the combination of record. Claim 18 further recites determining an error that causes the records to be sent from the second flow aggregation process in place of those from the first flow aggregation process. Since the combination does not teach or suggest the

second flow aggregation process, there can be no teaching or suggestion about this substitution. This claim clearly has not had *prima facie* obviousness established therefore.


Claims 3-17 and 19-23 depend, directly or indirectly, from claims 1, 2, and 18, and thus, are patentable at least for the same reasons that claims 1, 2, and 18 are patentable.

Applicant requests reconsideration of the rejections for these claims in light of the arguments presented herein. Specifically, the combinations of record do not teach or suggest several claim elements for each of the independent claims, and thus, the claims are non-obvious over the combination of record. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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